

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF IOWA
2 CEDAR RAPIDS DIVISION

3 United States of America,

4 Plaintiff, No. CR11-2025-8 LRR

5 vs.

6 Arthur Scott, Rochester
7 Mitchell, Edward Sapp,
7 and Lawrence Johnson,

8 Defendants.

9 * * * * *

10 Transcript of proceedings held at the
11 Federal Courthouse, Cedar Rapids, Iowa, on the 26th
12 day of April, 2011, commencing at 9:00 a.m.

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14 Before: Magistrate Judge Jon S. Scoles

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25 Transcript ordered the 6th of May, 2011.
Transcript delivered the 17th day of May, 2011.

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1 THE CLERK: All rise. The United States
2 District Court for the Northern District of Iowa is
3 now in session. The Honorable Magistrate Judge Jon
4 Stuart Scoles presiding.

5 THE COURT: Please be seated.

6 The matter now before the Court is the case
7 entitled United States of America versus Arthur
8 Scott, Rochester Mitchell, Edward Sapp, and Lawrence
9 Johnson, Number CR11, dash, 2025. This matter comes
10 on for a detention hearing at this time.

11 The government is represented by Special
12 Assistant United States Attorney Daniel Chatham.
13 Defendant Scott appears in court and is represented
14 by Attorney Jane Kelly.

15 Defendant Mitchell appears and is
16 represented by Attorney James Clements. Defendant
17 Sapp appears and is represented by Attorney Dan
18 O'Brien. And Defendant Johnson appears and is
19 represented by Attorney Webb Wassmer.

20 This matter is scheduled for a trial on
21 June 20. The issue before the Court today is whether
22 one or more of the defendants will be detained
23 pending that trial.

24 Are the parties prepared to proceed?

25 MR. CHATHAM: Yes, Your Honor.

1 THE COURT: And I guess my intention here is
2 I'm going to try to do this all in one big hearing,
3 even though it's a little bit cumbersome. But the
4 government will offer its evidence, and then the
5 witnesses can be cross-examined in the order that
6 their defendants are listed on the caption.

7 So Ms. Kelly will question first and then
8 Mr. Clements and then Mr. O'Brien and then
9 Mr. Wassmer. And if the defendants have any
10 evidence, they will present evidence in the same
11 order.

12 Ms. Kelly, are you prepared to proceed?

13 MS. KELLY: Yes.

14 THE COURT: And do Mr. O'Brien and Ms. Kelly
15 both have lavalier mikes? Is that right?

16 MS. KELLY: Yes.

17 MR. O'BRIEN: Yes.

18 THE COURT: All right. And, Mr. Clements,
19 are you prepared to proceed?

20 MR. CLEMENTS: Yes, Your Honor.

21 THE COURT: Mr. O'Brien?

22 MR. O'BRIEN: Yes.

23 THE COURT: And, Mr. Wassmer?

24 MR. WASSMER: Yes, Your Honor.

25 THE COURT: Mr. Chatham.

1 MR. CHATHAM: The United States calls Bryan
2 Furman.

3 THE COURT: Sir, if you'll step right over
4 here, please. Raise your right hand.

5 BRYAN FURMAN,
6 being produced, sworn as hereinafter certified, was
7 examined and testified as follows:

8 THE COURT: Please be seated.

9 DIRECT EXAMINATION
10 BY MR. CHATHAM:

11 Q. Would you please state your name and spell
12 your last for the record.

13 A. Bryan, B-R-Y-A-N, Furman, F-U-R-M-A-N.

14 Q. Are you the case agent in the case for the
15 four defendants here today?

16 A. Yes, I am.

17 Q. Can you explain to the Court generally how
18 this investigation began?

19 A. We began making controlled purchases of
20 heroin on May 13th, 2010.

21 Q. And from there, the -- did the investigation
22 progress to wiretap intercepts of a number of
23 different cellular telephones?

24 A. Yes.

25 Q. Did the -- After the wiretap, were there

1 additional controlled purchases of heroin?

2 A. Yes.

3 Q. Can you explain generally the process of a
4 controlled buy?

5 A. A controlled buy would consist of either
6 using an undercover officer or an informant or both.
7 If an informant is used, the informant would be
8 brought in with the agents. A controlled phone call
9 would be made to the target.

10 During that phone call, things would be
11 discussed, such as, quantity, price, and location for
12 a meeting. From there, the informant is searched to
13 ensure no contraband is taken into the controlled
14 purchase.

15 The informant then is either transported or
16 transports themselves to a meeting location where
17 they meet with the target. They conduct the
18 purchase. During this time, they are followed by
19 surveillance agents. And the controlled purchase is
20 monitored and surveilled by agents at the scene.

21 After the purchase, the informant or UC is
22 followed back. Again, searched. If the informant
23 drives their own vehicle, that is searched before and
24 after, as well.

25 Q. Have -- Were there any large quantities of

1 heroin seized in this case?

2 A. Yes, there were.

3 Q. And can you explain or give an example of
4 that?

5 A. On November 9th, the Cedar Rapids office
6 coordinated with the Memphis office. During that
7 coordination, Memphis was able to seize slightly
8 under two kilos of heroin and two handguns.

9 Q. And that's Memphis, Tennessee?

10 A. Yes.

11 Q. And since it happened in Tennessee, what was
12 the connection to the Northern District of Iowa?

13 A. Through the investigation, we knew that a
14 portion of that heroin that was seized was destined
15 for the Waterloo/Cedar Rapids area.

16 Q. Are you familiar with the dangers of heroin
17 use?

18 A. Yes, I am.

19 Q. And is that through your training and
20 experience?

21 A. Yes.

22 Q. Can you generally describe the dangers of
23 heroin use?

24 A. Outside of other narcotics uses, it's
25 extremely addictive. Generally those that use heroin

1 become addicted to heroin. The risk of overdose and
2 potential death is much higher than other narcotics.

3 Q. And what's a common dosage unit of heroin?

4 A. Generally, through this case, we've seen
5 users purchase either foil, bag or straw. Those
6 consist of generally .2 grams of heroin.

7 Q. So when you're talking about just under two
8 kilograms of heroin, you're talking not a whole lot
9 of dosage units for an average user?

10 A. Yes.

11 Q. Let's focus in on the specific defendants we
12 have here. Was Arthur Scott one of the targets of
13 the investigation?

14 A. Yes.

15 Q. And was he actually one of the people whose
16 phones was tapped?

17 A. Yes.

18 Q. And that was a court-authorized wiretap?

19 A. Yes.

20 Q. And were there a number of incriminating
21 telephone calls that came across on that wire?

22 A. Yes.

23 Q. Was there also surveillance done during the
24 course of the wiretap?

25 A. Yes.

1 Q. Based on the surveillance and the
2 intercepted telephone calls, what's your
3 understanding of Mr. Scott's involvement in heroin
4 distribution?

5 A. Throughout the investigation, we learned
6 that Mr. Scott was supplying lower-level user
7 quantities, several of those, as well as other source
8 of supply in the Waterloo, Iowa area.

9 Q. So he was supplying both users and dealers?

10 A. Yes.

11 Q. Did he have anybody working for him?

12 A. Yes.

13 Q. And in what manner were people working for
14 him?

15 A. Transportation. He would also defer calls
16 to other people that were working for him to supply
17 all those other people.

18 Q. Were there any search warrants conducted of
19 Mr. Scott's residence?

20 A. Yes.

21 Q. And when was that?

22 A. On February 15th.

23 Q. Of 2011?

24 A. Yes.

25 Q. What was found in that search?

1 A. During that search, packaging material was
2 located, other drug paraphernalia was located.

3 Q. No heroin?

4 A. No.

5 Q. Was there an interview done with the
6 defendant?

7 A. Yes.

8 Q. Did the defendant make any admission? Did
9 Mr. Scott make any admissions during this interview
10 as to his heroin sales?

11 A. Yes.

12 Q. What did he say?

13 A. He confirmed a lot of the information that
14 we believed to be true, as far as his activities
15 selling and distributing heroin in Waterloo.

16 Q. Did he talk about quantities that he was
17 selling?

18 A. Yes, he did.

19 Q. And what type of quantities was that?

20 A. In particular, we discussed another subject
21 involved. He stated that approximately every two
22 days he would meet with this subject and purchase six
23 grams of heroin and make a payment to them on a
24 consistent basis.

25 Q. And over what time period was that?

1 A. The time frame with that subject was from
2 November 2010 to the time of the search warrant.

3 Q. Is it your understanding that Mr. Scott is a
4 heroin user?

5 A. Yes, he is.

6 Q. For a significant period of time?

7 A. Yes.

8 Q. Let's talk, then, about Rochester Mitchell
9 and Ed Sapp. Were both of those individuals
10 intercepted during the wiretaps?

11 A. Yes, they were.

12 Q. Over whose phones, if you recall?

13 A. Arthur Scott's phone.

14 Q. What -- Based on the surveillance and
15 intercepted phone calls, what's your understanding of
16 Mr. Mitchell's and Mr. Sapp's relative roles in the
17 conspiracy?

18 A. Mr. Mitchell and Mr. Sapp were selling
19 heroin from a location where Mr. Sapp was residing,
20 at 117 and a half Lafayette in Waterloo.

21 Q. And was one person or the other primarily
22 selling, or what were they -- what was the
23 relationship between the two of them?

24 A. They were partners. I believe that
25 Mr. Mitchell was the -- I guess, the leader.

1 However, they were both partners working in
2 conjunction with each other.

3 Q. Was there a search warrant ever done at
4 Mr. Sapp's house?

5 A. Yes, there was.

6 Q. And when was that?

7 A. Again, on February 15th.

8 Q. Again, of 2011?

9 A. Yes.

10 Q. And what was found in that search warrant?

11 A. Ten foils of heroin, packaging material, and
12 also items used to package for sales.

13 Q. And when you say "ten foils," about how much
14 heroin is that?

15 A. Approximately .2 grams per foil. So two
16 grams.

17 Q. Was there ever a search done at
18 Mr. Mitchell's house?

19 A. Yes.

20 Q. On that same date, February 15th?

21 A. Yes.

22 Q. What was found during that search?

23 A. In his pocket were 31 foils of heroin.

24 Q. Was there anything else found?

25 A. To the best of my memory, I don't recall.

1 Q. Was there methadone found?

2 A. Yes, there was.

3 Q. Any cutting agents found?

4 A. I believe there was some Dormin found there
5 as well.

6 Q. And what is Dormin?

7 A. Dormin is commonly used as a cutting agent
8 to expand the amount of heroin that they have to
9 sell. They would take a more pure quantity of
10 heroin, use the Dormin to essentially make, for
11 example, one gram into two grams.

12 Q. Is Dormin a -- typically a sleeping pill?

13 A. Yes.

14 Q. Was there -- Were there ever any controlled
15 transactions relating to Mr. Mitchell and Mr. Sapp?

16 A. Yes, there were.

17 Q. And did those occur on January 7th, 10th,
18 and 27th of 2011?

19 A. Yes.

20 Q. And those were all CI buys?

21 A. Yes.

22 Q. And were both Mr. Mitchell and Mr. Sapp
23 involved in each of those transactions?

24 A. Yes, they were.

25 Q. Was there another instance where

1 Mr. Mitchell was arrested or found to have heroin in
2 his possession?

3 A. Yes, there was.

4 Q. And when was that?

5 A. I don't recall the date. He was interdicted
6 with the Tri-County Drug Task Force located in
7 Waterloo, arriving from Chicago back to Waterloo
8 transporting heroin.

9 Q. And interdicted in -- Was he in a car or --

10 A. He was traveling on the bus between Chicago
11 and Waterloo. Mr. Sapp arrived to retrieve him from
12 the bus stop.

13 Q. And how much heroin was found?

14 A. Approximately seven grams.

15 Q. Is it your understanding that both
16 Mr. Mitchell and Mr. Sapp are heroin users?

17 A. Yes.

18 Q. And have been for a while?

19 A. Yes.

20 Q. Let's talk, then, about Mr. Johnson. Was
21 Mr. Johnson intercepted on the wiretaps?

22 A. No, he was not.

23 Q. So how -- What's his relative placement in
24 this conspiracy?

25 A. Through the course of the investigation, it

1 was learned that at times when others involved in the
2 conspiracy weren't able to get heroin from their
3 normal sources, he would supply heroin through some
4 of the other organization members.

5 Q. So he's sort of the alternate source?

6 A. Yes.

7 Q. Were there any controlled buys conducted
8 from Mr. Johnson?

9 A. Yes.

10 Q. And did that happen on January 12th of 2011?

11 A. Yes, it did.

12 Q. And how much heroin was purchased from
13 Mr. Johnson on that day?

14 A. We purchased ten foils, approximately two
15 grams.

16 Q. And for how much?

17 A. \$200.

18 Q. Were there any search warrants done at
19 Mr. Johnson's residence?

20 A. Yes, there was.

21 Q. And what was found in that search warrant?

22 A. Seven foils, seven additional foils of
23 heroin, as well as a handgun.

24 Q. And was that search also conducted on
25 February 15th of 2011?

1 A. Yes.

2 Q. Was the handgun loaded?

3 A. Yes.

4 Q. Was the defendant interviewed? "The
5 defendant," being Mr. Johnson. Was Mr. Johnson
6 interviewed on February 15th?

7 A. Yes, he was.

8 Q. Did he make any admissions as to the gun?

9 A. Yes, he did.

10 Q. And what did he say?

11 A. He told the agents that he had purchased the
12 gun on the street. The reason for the purchase was
13 for protection.

14 Q. Is it your understanding that Mr. Johnson is
15 a heroin user?

16 A. Yes, he is.

17 MR. CHATHAM: Nothing further, Your Honor.

18 THE COURT: Ms. Kelly.

19 MS. KELLY: Thank you.

20 CROSS-EXAMINATION

21 BY MS. KELLY:

22 Q. Agent, you've testified about a search --

23 THE COURT: Do you have your microphone on?

24 MS. KELLY: I apologize. I do now.

25 BY MS. KELLY:

1 Q. Agent, you've testified about a search at
2 Arthur Scott's residence; correct?

3 A. Yes.

4 Q. And you have said that you found no heroin
5 at that residence?

6 A. Correct.

7 Q. And what was the date of that search?

8 A. February 15th, 2011.

9 Q. You've also testified that you spoke with
10 Mr. Scott; correct?

11 A. Yes.

12 Q. What date was that?

13 A. We spoke with him several times.

14 Q. Do you know how many times?

15 A. I believe we met with him approximately two
16 to three times.

17 Q. And he voluntarily met with you on each of
18 those occasions?

19 A. Yes.

20 Q. So since February 15th of this year,
21 Mr. Scott has been aware that he is under
22 investigation?

23 A. Yes.

24 Q. And you've seen no indication that he's
25 attempted to leave the area?

1 A. Correct.

2 Q. When an arrest warrant was issued for
3 Mr. Scott, I assume that came after the indictment
4 was filed on the 19th of this month?

5 A. Yes.

6 Q. Did Mr. -- Did you have contact with
7 Mr. Scott around that time?

8 A. Generally, yes.

9 Q. And did he make arrangements with you to
10 make sure he could turn himself in or that he would
11 be available for the officers so that they could take
12 him into custody?

13 A. Yes.

14 Q. So he was assisting in that process?

15 A. Yes.

16 Q. And has he been generally cooperative with
17 you and the other officers and agents in speaking
18 with you and making arrangements to talk?

19 A. In regards to making arrangements to talk,
20 yes.

21 Q. The indictment alleges a conspiracy that
22 purportedly began in January of 2007; correct?

23 A. Correct.

24 Q. Now, you've testified that you began
25 controlled buys in May of 2010?

1 A. Correct.

2 Q. Did you also conduct investigations that
3 predated May 2010?

4 A. The investigation that was conducted
5 reference that time was a compilation of intelligence
6 and reports done by the Tri-County Drug Task Force
7 who worked the area of Waterloo, Iowa.

8 Q. So they had already gathered information
9 that then you used in your investigation that began
10 roughly in May of 2010?

11 A. Yes.

12 Q. And so you are relying also on that
13 information in understanding the scope of what you
14 believe this conspiracy to be?

15 A. In part.

16 Q. And in that information -- in that -- In
17 those reports in that investigation, did you learn
18 that Mr. Scott was actually employed full-time from
19 2000 to 2008?

20 A. I believe we spoke with him, and he stated
21 that he had been.

22 Q. And so that was not in any of the
23 investigative reports prior to that, that he was
24 working full-time until December of 2008?

25 A. At the time of that investigation, it really

1 didn't have any bearing whether or not he was
2 working. Our investigation was based on his
3 extracurricular narcotics trafficking.

4 Q. So you didn't monitor where else he was
5 spending his time during the days?

6 A. When we began the investigation, he was no
7 longer working.

8 Q. I'm sorry. I mis- --

9 A. When we began our investigation, he was no
10 longer working.

11 Q. When you began in 2010?

12 A. Yes.

13 MS. KELLY: I have nothing further. Thank
14 you.

15 THE COURT: Mr. Clements.

16 MR. CLEMENTS: Thank you.

17 CROSS-EXAMINATION

18 BY MR. CLEMENTS:

19 Q. You've described a couple things regarding
20 Mr. Mitchell. And you indicated that he was
21 intercepted on a bus from Chicago. And you indicated
22 that you couldn't remember when that was. Could you
23 give us an approximate time of when that was?

24 A. Oh, I believe it was in the last 30 days. I
25 can't be exact. It completely slips my mind. I just

1 looked yesterday.

2 Q. Everything that I've heard regarding
3 Mr. Mitchell appears to have happened in the year
4 2011. When are you alleging that Mr. Mitchell began
5 participating in this conspiracy?

6 A. 2008.

7 Q. Now, you indicated that there was a search
8 of my client's house and that foils of heroin were
9 found in his pocket. Did he make any admissions or
10 statements to you at that time?

11 A. No, he did not.

12 Q. The three controlled buys that you described
13 involving Mr. Mitchell and Mr. Sapp, were both of
14 them involved in all three of those controlled buys?

15 A. Yes.

16 MR. CLEMENTS: No other questions.

17 THE COURT: Mr. O'Brien.

CROSS-EXAMINATION

19 BY MR. O'BRIEN:

20 Q. Have you talked with Mr. -- Have you had any
21 interviews with Mr. Sapp?

22 A. We attempted to interview him the day of the
23 bus interdiction.

24 Q. And did he talk with you at that time?

25 A. No, he did not.

1 Q. On that date at the bus interdiction, did he
2 have any heroin in his possession?

3 A. I don't believe so, no.

4 Q. He didn't have any other narcotics in his
5 possession?

6 A. No.

7 Q. Didn't have any firearms in his possession?

8 A. No.

9 Q. On the search warrant that was conducted,
10 was Mr. Sapp at home on that date?

11 A. Yes.

12 Q. You didn't talk to him that date?

13 A. The agents that served the warrant did speak
14 with him.

15 Q. Did he make any statements?

16 A. I believe he stated that he was a heroin
17 user or denied any involvement in the conspiracy-type
18 situation.

19 Q. The amount of heroin that was found there
20 was user-type quantities?

21 A. No. They located ten foils, approximately
22 two grams.

23 Q. Ten foils. One foil would be like one hit
24 or one use?

25 A. Depending on the purity.

1 Q. On the wiretap, when that went up, that was
2 back in -- when of 2010?

3 A. I'm sorry?

4 Q. When did the wiretap go into effect?

5 A. The first Title III went up, I believe,
6 September 23rd or thereabouts.

7 Q. 2010?

8 A. Yes.

9 Q. When was Mr. Sapp first appearing on the
10 wiretaps?

11 A. I don't have that information in front of
12 me.

13 Q. And Mr. Sapp, has he been aware that he's
14 been under investigation since the search warrant?

15 A. Well, I would assume so.

16 Q. And he hasn't made any attempt to flee, that
17 you know of?

18 A. Not that I'm aware of.

19 Q. And in 2010 and prior years, Mr. Sapp -- did
20 you know he was working at Tyson's Foods?

21 A. I believe he told the agents during the
22 search warrant that he had been.

23 MR. O'BRIEN: I don't have any additional
24 questions.

25 THE COURT: Mr. Wassmer.

1 MR. WASSMER: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WASSMER:

4 Q. You mentioned that Mr. Johnson had not been
5 intercepted on any of the wiretaps; is that correct?

6 A. Correct.

7 Q. How many hours of tape-recorded
8 conversations were there total?

9 A. I could guess, but it's --

10 Q. Give me a rough guess.

11 A. I can't do it.

12 Q. Okay. Are we talking hundreds of hours,
13 thousands of hours?

14 A. From September 27th, 29th, thereabouts,
15 until March 9th. It would have been 16 hours a day,
16 generally seven days a week.

17 Q. Okay. And Mr. Johnson is not on any of
18 those wiretaps; correct?

19 A. Correct.

20 Q. Were there also text messages intercepted?

21 A. Yes.

22 Q. Any text messages to or from Mr. Johnson?

23 A. No.

24 Q. When Mr. Johnson -- When the search warrant
25 was executed on February 15th, information from his

1 cell phone was downloaded; correct?

2 A. I would guess yes. I don't know for sure.

3 That was the plan with each search warrant, was to
4 download cell phones.

5 Q. To your knowledge, is the phone number for
6 any codefendant in this case on Mr. Johnson's cell
7 phone?

8 A. I couldn't say.

9 Q. What evidence, if any, connects Mr. Johnson
10 to Dwayne Appling, one of the codefendants?

11 A. The -- Another co-conspirator within the
12 organization. Based on that person, a controlled
13 purchase was made with Mr. Johnson.

14 Q. Okay. Well, what connection to Mr. Appling
15 is that?

16 A. It's an entire organization. All these
17 folks are intertwined as users, suppliers. It's very
18 entangled.

19 Q. Well, if I understood you correctly on
20 direct, what you said was some of the users who are
21 cooperating had indicated that when they couldn't
22 find heroin with one of their normal suppliers,
23 whether that was Mr. Scott, Mr. Mitchell, whoever,
24 Mr. Johnson was the potential alternate source that
25 they could go to; correct?

1 A. Correct.

2 Q. That's basically how you got to Mr. Johnson?

3 A. Correct.

4 Q. What I'm asking is, what connection, if any,
5 is there directly between Mr. Appling and
6 Mr. Johnson? Have they ever talked to each other?
7 Do they know each other? Is there any evidence of
8 that that you've uncovered?

9 A. I can't say if they know each other. I
10 don't have any evidence that they've talked to each
11 other.

12 Q. Okay. Any evidence with respect to
13 Mr. Scott, that Mr. Johnson knows Mr. Scott or has
14 ever talked to Mr. Scott?

15 A. I can't say.

16 Q. What about Mr. Mitchell?

17 A. Yes.

18 Q. Okay. And how do Mr. Johnson and
19 Mr. Mitchell know each other?

20 A. Through the subject that I guess unwittingly
21 coordinated the controlled purchase from Mr. Johnson.

22 Q. Okay. Who was that? Are you able to say?

23 MR. CHATHAM: Objection, Your Honor.

24 Relevance.

25 THE COURT: Sustained.

1 BY MR. WASSMER:

2 Q. Okay. And how did this individual
3 coordinate the purchase through Mr. Johnson?

4 A. By taking an informant over to that
5 location, making the purchase.

6 Q. Okay. Mr. Mitchell took someone over to
7 make a purchase with Mr. Johnson? Is that what
8 you're saying, or --

9 A. A third party did.

10 Q. A third party. That knows both Mr. Mitchell
11 and Mr. Johnson?

12 A. That, I do know. Yes.

13 Q. Okay. Is there any information that you
14 have that Mr. Mitchell and Mr. Johnson have ever
15 bought and sold -- or sold heroin to each other?

16 A. Through interviews, we've learned that is
17 true.

18 Q. Okay. Through interviews of whom?

19 A. Informants.

20 Q. Okay. What about Ms. Moore? Any connection
21 between Ms. Moore and Mr. Johnson?

22 A. That, I don't know.

23 Q. What about Ms. Hayes?

24 A. I don't know that, either.

25 Q. Mr. Edwards?

1 A. Yeah. I don't know that. I don't believe
2 so with that.

3 Q. And Mr. Sapp? Any connection with Mr. Sapp,
4 that you know of?

5 A. I can assume, because he and Rochester are
6 partners. However, I can't say as though that would
7 be true.

8 Q. Okay. With regard to the January 12th, 2011
9 controlled buy, was that controlled buy recorded in
10 any way?

11 A. Yes.

12 Q. Audio or video or both?

13 A. Audio.

14 Q. Any photographs?

15 A. No.

16 Q. And I think you said there were ten foils of
17 approximately .2 grams purchased?

18 A. Correct.

19 Q. And is that a typical amount that a user
20 purchases?

21 A. No.

22 Q. Okay. What's the typical amount that a user
23 purchases?

24 A. One to two bags or foils.

25 Q. Do users ever purchase more than that if

1 they're stocking up?

2 A. Rarely.

3 Q. When are you contending that Mr. Johnson
4 joined the conspiracy charge in Count 1?

5 A. Approximately the beginning of 2011.

6 Q. Let's turn to the February 15th, 2011 search
7 warrant. I think you said there were seven foils
8 seized?

9 A. Correct.

10 Q. And were those all approximately .2 grams
11 each?

12 A. I believe so.

13 Q. And Mr. Johnson told the officers that that
14 was for his personal use; correct?

15 A. I don't recall that.

16 Q. Okay. Who interviewed Mr. Johnson?

17 A. Agent Dusty Worley.

18 Q. Okay. Where was the gun found?

19 A. I believe in a Tupperware container.

20 Q. And where in the house?

21 A. If memory serves me correctly, it was in the
22 basement.

23 Q. And were you aware that the brother of
24 Mr. Johnson's girlfriends [sic] lived -- girlfriend
25 lives in that basement?

1 A. I was not.

2 Q. Do you know that Mr. Johnson did not live at
3 that house?

4 A. I don't know if that's true.

5 Q. Okay. Was the gun registered to anyone?

6 A. No.

7 Q. Were any fingerprints of Mr. Johnson found
8 on the gun?

9 A. I'm not aware of any that were located.

10 Q. And you indicated that Agent Worley had
11 interviewed Mr. Johnson; correct?

12 A. Yes.

13 Q. Was that interview recorded?

14 A. No.

15 Q. Do you know if Agent Worley told Mr. Johnson
16 on February 15th that he was the subject of a Federal
17 investigation?

18 A. I couldn't say.

19 Q. Do you know if Mr. Worley told Mr. Johnson
20 that Mr. Johnson could be going to prison for a long
21 time?

22 A. Honestly, I couldn't say.

23 Q. And Mr. Johnson was released after that. He
24 was not arrested on February 15th; correct?

25 A. Correct.

1 Q. And he did not flee; correct?

2 A. I -- We located him at the time -- He
3 actually turned himself in at the time of the arrest.
4 Between then and the search warrants, we didn't have
5 contact with Mr. Johnson.

6 Q. Okay. Well, the arrest warrant was issued
7 on April 19th after the indictment; correct?

8 A. Correct.

9 Q. And you or somebody else called up
10 Mr. Johnson and told him that an arrest warrant had
11 been issued; correct?

12 A. I believe they spoke to his mother, who
13 contacted him.

14 Q. Okay. And then Mr. Johnson turned himself
15 in promptly; correct?

16 A. That's my understanding, yes.

17 MR. WASSMER: Okay. Nothing further, Your
18 Honor.

19 THE COURT: Mr. Chatham?

20 MR. CHATHAM: Nothing further.

21 THE COURT: Anything else, Ms. Kelly?

22 MS. KELLY: No.

23 THE COURT: Mr. O'Brien -- Or excuse me.
24 Mr. Clements?

25 MR. CLEMENTS: No, Your Honor.

1 THE COURT: Mr. O'Brien?

2 MR. O'BRIEN: No, Your Honor.

3 THE COURT: You may step down.

4 Any additional evidence, Mr. Chatham?

5 MR. CHATHAM: No, Your Honor.

6 THE COURT: Ms. Kelly, do you have any
7 evidence you would like to offer?

8 MS. KELLY: We have no evidence. Just
9 argument.

10 THE COURT: Mr. Clements, do you have any
11 evidence you'd like to offer?

12 MR. CLEMENTS: Just proffer the Pretrial
13 Services Report.

14 THE COURT: Mr. O'Brien, do you have any
15 evidence you'd like to offer?

16 MR. O'BRIEN: No, Your Honor.

17 THE COURT: Mr. Wassmer, do you have any
18 evidence you'd like to offer?

19 MR. WASSMER: No, Your Honor.

20 THE COURT: All right. Then I'll hear
21 arguments on this issue. I think what I'd like to do
22 is go through each defendant one by one.

23 Mr. Chatham, if you'll address the detention
24 of Mr. Scott first. And then Ms. Kelly will have an
25 opportunity to respond. And then I'll go through

1 that while it's still relatively fresh in my mind.

2 MR. CHATHAM: Thank you, Your Honor.

3 The United States would rely on the
4 information contained in the Pretrial Services Report
5 as well as the testimony today of Agent Furman. This
6 is a case -- In all instances, this is a case where
7 there is a rebuttable presumption in favor of
8 detention under 3142(e).

9 Here the factors, the 3142(g) factors, the
10 nature and circumstances of this offense are that
11 it's a controlled substance offense. And the weight
12 of the evidence here is -- the United States would
13 say is strong.

14 There are hundreds of calls and text
15 messages intercepted by Mr. Scott relating to drug
16 trafficking. There -- There's an interview -- a
17 search warrant at his place where drug packaging
18 materials were found and an interview where Mr. Scott
19 admitted to selling six grams -- or receiving six
20 grams every other day, that is, of heroin, between
21 November and -- November 2010 and February 2011.

22 And, also, as the defendant has admitted to
23 the pretrial services officer, Defendant is a heroin
24 addict. Although, he claims that he's been illegally
25 obtaining methadone and has apparently attempted to

1 kick his habit here in the last few weeks.

2 As to the defendant's -- the history and
3 characteristics of Mr. Scott, we'll note that the
4 defendant is unemployed, and apparently has been
5 unemployed since 2008, since the end of 2008.

6 Looking through the defendant's criminal
7 history, there's -- it's a lengthy criminal history
8 dating back to roughly 1985 as far as arrests go. In
9 1989, there's an unlawful use of a firearm. In '92,
10 he was -- has a felony conviction for possession of a
11 controlled substance with intent to deliver for which
12 he received a three-year prison sentence in Illinois.

13 Another conviction for -- a felony drug
14 conviction, it appears, from 1993. Another
15 apparently felony conviction in Illinois in 1995 for
16 retail theft. And then the most recent conviction
17 being in 2002, a felony drug conviction in Black Hawk
18 County for possession with intent to distribute
19 crack, where the defendant received a 10-year
20 suspended sentence.

21 Based on all this information, the United
22 States asserts that the defendant is both a flight
23 risk and a danger to the community. And the United
24 States asks that he be detained.

25 THE COURT: Ms. Kelly.

1 MS. KELLY: Thank you.

2 We believe in the first instance that
3 Mr. Scott is not a flight risk. I believe that the
4 probation office has reached a similar conclusion in
5 the Pretrial Services Report.

6 We note that Arthur Scott has lived in
7 Waterloo for the last 12 years and at the same
8 residence for the last seven. He's been with his
9 wife for about ten years. And they're raising two
10 children, ages nine and five, in Waterloo. And that
11 he does have a stable home that he can return to.

12 And we note that even his mother lives in
13 Waterloo as well. So he does have family ties to the
14 community. And we believe that those ties are
15 strong. The prosecutor has noted that Mr. Scott is
16 not currently employed.

17 But we note that, as stated in the Pretrial
18 Services Report, he was steadily employed from the
19 year 2000 until December 2008, working at a tannery
20 in Waterloo. The only reason he lost that job was
21 because that company moved that business to Mexico
22 out of Waterloo.

23 He's tried to support himself and his family
24 through odd jobs since then. And certainly, if he
25 were to be released, he would be trying to get

1 something a bit more stable, as he's been trying to
2 do over the past several weeks.

3 His wife does work. She works at a Holiday
4 Inn Express. So the family does have income at this
5 time. So they are able to support themselves. We
6 also note that, as the agent's testified, Mr. Scott
7 did make arrangements to turn himself in or at least
8 make himself available for the officers to come and
9 get him when there was an arrest warrant here.

10 We have no indication whatsoever that once
11 Arthur Scott knew he was under investigation he made
12 any efforts whatsoever to leave the area. We also
13 believe there's not sufficient evidence to show that
14 he's a danger to the community.

15 According to the Pretrial Services Report
16 and the testimony here today, it does appear that
17 Arthur Scott has had a problem with heroin use. But
18 we also note that over the last month or so he seems
19 to have taken some significant steps to stop using
20 heroin.

21 And we note that his wife has confirmed this
22 as well, that he seems to have been clean at least
23 for a little while now, she said. The government
24 also focuses on Mr. Scott's criminal history.

25 But we note that the more serious drug

1 charges that they refer to and that are identified in
2 the bond report occurred in Cook County in 1992 and
3 1993 when Mr. Scott was about 24 or 25 years old.

4 He did receive a concurrent sentence for
5 those offenses. And, really, the next drug
6 trafficking offense would be the Waterloo case from
7 2002. Now, the State court in Waterloo saw fit to
8 give him a suspended sentence on that case.

9 He received five years of probation. And
10 all indications are that he discharged that term of
11 probation successfully. So we do have some evidence
12 of recent compliance on terms and conditions that a
13 Court has imposed on Mr. Scott.

14 Now, the Pretrial Services Report also
15 refers to some concern about violent behavior in
16 Mr. Scott's history. I would respectfully disagree
17 with that.

18 While we do have one firearm case from 1989,
19 and he was arrested on one instance -- I'm sorry --
20 two instances for domestic battery, those seem to
21 have been dismissed or stricken from leave.

22 I also note that in the testimony here today
23 from the agent, in describing this overall conspiracy
24 and the alleged roles that each person purportedly
25 plays in it, we heard no testimony that Mr. Scott

1 carried a firearm, had a firearm, or spoke of
2 violence at all during any of these alleged wiretap
3 conversations.

4 So I don't think we have the evidence that
5 Mr. Scott is a violent or aggressive person. And I
6 don't think that that should be a concern for this
7 Court.

8 The government also focuses heavily on the
9 evidence that they've gathered in this case, the
10 scope of this purported conspiracy. As the Court,
11 I'm sure, is aware, the defense is a couple of steps
12 behind here because we don't have yet access to all
13 of this information.

14 But when we look at what the agent has
15 testified to here today, what I heard was in addition
16 to the description of what the government believes
17 was Mr. Scott's involvement, I also heard that
18 Mr. Scott was very cooperative with law enforcement
19 in making arrangements to meet with them.

20 Again, as I stated, he made arrangements to
21 turn himself in. And he spoke with these officers
22 willingly and without counsel.

23 In sum, Your Honor, we believe that there is
24 a set of conditions that this Court could impose on
25 Mr. Scott. He understands that those terms and

1 conditions would be very restrictive under the
2 circumstances.

3 This is a serious set of charges that these
4 individuals are facing. And Mr. Scott understands
5 the severity of those charges. But we respectfully
6 ask the Court to consider releasing Mr. Scott on
7 terms and conditions pending resolution of this
8 matter.

9 THE COURT: In determining whether a
10 defendant should be released pending a trial, the
11 Court is governed by Title 18 United States Code
12 Section 3142(e).

13 The pretrial detention of a defendant
14 requires a finding by the Court that no condition or
15 combination of conditions will reasonably assure his
16 appearance as required and the safety of the
17 community.

18 The government has the burden of proof in
19 this regard. It is aided in this case by a
20 rebuttable presumption that's found in section
21 3142(e).

22 And that is, if there is probable cause to
23 believe that the defendant has committed a serious
24 drug offense, then there's a rebuttable presumption
25 that he should be detained pending the trial.

1 In this case, the grand jury found probable
2 cause to charge the defendant with conspiracy to
3 distribute heroin and, I believe, one count of
4 distribution of heroin near a school.

5 In addition, the testimony of Task Force
6 Officer Furman establishes probable cause. So there
7 is a rebuttable presumption that's triggered in this
8 case that the defendant should be detained.

9 The defendant then has a burden of
10 production regarding evidence as to why he should not
11 be detained. However, the burden of persuasion
12 remains on the government. In determining whether or
13 not the government has met that burden, the Court
14 considers the factors set forth in Section 3142(g).

15 They include the nature and circumstances of
16 the offense charged, including whether the offense is
17 a crime of violence or involves narcotic drug or
18 minor victim or firearm.

19 In this case, the defendant is charged in
20 two counts, both counts relating to a narcotic drug.
21 The Court's required to consider the weight of the
22 evidence.

23 Obviously, this is not the trial. And
24 accordingly, the testimony regarding the facts is
25 necessarily very limited. And so it's difficult for

1 the Court to determine the weight of the evidence.

2 However, according to Officer Furman, the
3 defendant's phone was wiretapped and there are calls
4 which were intercepted which support the allegations
5 here. The defendant -- defendant's property was
6 searched and packaging material and drug
7 paraphernalia were found.

8 The defendant was interviewed and apparently
9 admitted to the distribution of heroin. In addition,
10 there was a controlled purchase made from the
11 defendant on January 4, 2011. So the --

12 Obviously, I'm not making any judgment about
13 the defendant's guilt or innocence, but the -- it
14 would appear that the weight of the evidence is
15 fairly strong.

16 The Court's also required to consider the
17 defendant's history and characteristics, including
18 his character, physical and mental condition, family
19 ties, employment, financial resources, and ties to
20 the community.

21 This information is found in the Pretrial
22 Services Report. The defendant is 42 years old. He
23 was born and raised in Chicago. Lived in Elkhart,
24 Indiana for one year and Cleveland, Ohio for three
25 years before moving to Waterloo in 1999.

1 Prior to his arrest, he was living with his
2 wife and two children. He has extended family --
3 Well, his mother lives in Waterloo. And he has
4 extended family. His father and his brothers and
5 sisters apparently live in the Chicago area.

6 The defendant has been unemployed since
7 December of 2008, although he indicates that he's
8 done odd jobs since that time. The defendant is in
9 good health and has no history of mental or emotional
10 health concerns.

11 The Court's also required to consider the
12 defendant's past conduct, including history relating
13 to drug or alcohol abuse, criminal history, and
14 record concerning appearances at court proceedings.

15 The defendant admits that he is a user of
16 heroin. According to the Pretrial Services Report,
17 he first used back in the early 1990s, but did not
18 use between 2000 and 2009. However, from 2009 until
19 about a month ago, he was a daily user of heroin.

20 Now, the defendant told the pretrial
21 services officer that he's been taking methadone and
22 Suboxone, which are apparently prescription
23 medications used to treat opiate addiction, although
24 he does not have a prescription for those and has
25 been getting them off the street.

1 The defendant has a criminal record dating
2 back to age 18. He was arrested twice in 1987.
3 Those were stricken from the docket with leave to
4 reinstate, which apparently is a common practice in
5 Cook County, Illinois.

6 In 1988, he was arrested twice more. Those
7 were also stricken or not prosecuted. In 1989, he
8 was arrested twice more. This time the unlawful use
9 of a firearm apparently was prosecuted and the
10 defendant received one year of supervision.

11 In 1990, he was arrested for possession of a
12 controlled substance. That appears to be the fifth
13 time that he was arrested for possession of a
14 controlled substance, if you count when he was 17.

15 It indicates that bond was forfeited in that
16 case. That arrest occurred while the defendant was
17 under supervision for the unlawful use of a firearm.
18 He apparently was not arrested in 1991.

19 In 1992, he was arrested twice more for
20 solicitation of narcotics. And that was not
21 prosecuted. However, he was prosecuted for
22 possession of a controlled substance with intent to
23 deliver.

24 While that charge was pending, the defendant
25 was arrested in 1993 with possession of a controlled

1 substance with intent to deliver on school grounds or
2 public parkway and a second count of possession of a
3 controlled substance with intent to deliver.

4 On November 22, 1993, the defendant was then
5 sentenced on all three of those counts. Three years
6 in prison on the first one. It appears four years in
7 prison on the second two. So after being sentenced
8 to those three years and four years, Defendant went
9 to prison.

10 He was paroled after about six months, in
11 May of 1994. In March of 1995, while he was on
12 parole, the defendant was charged with possession of
13 cocaine. In July of 1995, while he was on parole, he
14 was charged with retail theft.

15 In October of 1995, while he was on parole,
16 he was charged with another retail theft. And then
17 in November of 1995, November -- yeah, November of
18 1995, he was sent to prison on the latest charge of
19 retail theft and his parole was revoked on the prior
20 three drug -- felony drug convictions.

21 He was paroled again after about six months,
22 in March of 1996. In September of 1996, while he was
23 on parole, he was arrested and charged with domestic
24 battery, although that was stricken from the
25 record -- or stricken from the docket with leave to

1 reinstate.

2 In October of 1996, while he was on parole,
3 he was charged with disorderly conduct, although
4 disposition of that is unknown. The defendant was
5 apparently discharged from parole in March of 1997.

6 In January of 1998, the defendant was
7 charged with domestic battery in Cook County. That
8 was stricken from the record -- or stricken from the
9 docket with leave to reinstate.

10 And then in June of 2002, he was charged in
11 Black Hawk County with possession with intent to
12 distribute crack cocaine and he received a 10-year
13 suspended prison sentence.

14 So by my count, the defendant has four prior
15 felony drug convictions and has an additional prison
16 term on a theft charge. There's no indication the
17 defendant ever failed to appear for any court
18 proceeding.

19 The Court's also required to consider
20 whether, at the time of the current offense or
21 arrest, the defendant was on probation, parole, or
22 other pretrial release. The defendant was on
23 probation until August of 2004.

24 It does not appear that he was on any sort
25 of pretrial release or probation at the time of the

1 events which give rise to these charges.

2 And, finally, the Court's required to
3 consider the nature and seriousness of the danger to
4 any person or the community that would be posed by
5 the defendant's release. In this case, the defendant
6 does have a prior conviction for the unlawful use of
7 a firearm, although that was some time ago.

8 In addition, as Officer Furman testified,
9 the distribution of heroin generally poses a risk to
10 the community. In this case, the Court is
11 particularly concerned about the fact the defendant
12 has four prior felony drug convictions and there is
13 substantial evidence to indicate that he was
14 distributing heroin recently.

15 The Court's also concerned about the fact
16 that the defendant admits that he has continued to
17 use heroin up until about a month prior to his
18 arrest. I think it's significant in this case,
19 because there were search warrants executed on
20 February 15, 2011.

21 And by that time, at least, the defendant
22 knew, presumably, that he was a target of a Federal
23 investigation or at least a State investigation. And
24 notwithstanding that fact, he continued to use heroin
25 up until about a month ago.

1 The Court believes that based on all these
2 facts and circumstances, including the rebuttable
3 presumption that applies in this case, that the
4 government has met its burden of proof and the
5 defendant should be detained.

6 Now, Mr. Scott, you do have the right to
7 appeal my decision. And that right to appeal is
8 commenced by filing a motion for a review by Chief
9 Judge Linda Reade. And Ms. Kelly can assist you in
10 doing that.

11 MS. KELLY: Your Honor, if I could have just
12 a moment. My client has indicated that he very badly
13 needs to use the restroom. And since his matter is
14 resolved, I didn't know if it would be all right if
15 perhaps the marshals could escort him at this time?

16 THE COURT: Yeah. You can be excused.

17 MS. KELLY: Thank you, Your Honor.

18 THE COURT: All right. At this time I'd
19 like to talk about Rochester Mitchell. Mr. Chatham.

20 MR. CHATHAM: Thank you, Your Honor.

21 Again, without going through all the general
22 issues again, it's a rebuttable presumption case. It
23 involves a controlled substance. Here, the testimony
24 today has shown that the Defendant Mitchell was
25 intercepted on wiretaps having drug-related

1 conversations.

2 There was -- There were three controlled
3 transactions with Mr. Mitchell and a fourth incident
4 in which he was arrested after stepping off a bus
5 from Chicago with seven grams of heroin in his
6 possession. The search of the defendant's house,
7 where there was methadone and heroin found.

8 Based on all that, the weight of the
9 evidence against Mr. Mitchell is strong. Here, as to
10 the history and characteristics of Mr. Mitchell,
11 again, the United States would note that the
12 Defendant Mitchell is also unemployed and apparently
13 has been so since 2010.

14 Mr. Mitchell also has a substantial history
15 of arrests and convictions, including apparent felony
16 convictions for possession of a controlled substance
17 in 1991 in Cook County, Illinois, sale or delivery of
18 a controlled substance in 1992 in Cook County,
19 Illinois, possession of heroin, less than 15 grams,
20 in 19 -- arrest in 1995 and a conviction in '96.

21 Another apparently misdemeanor conviction
22 for possession of a controlled substance, cocaine.
23 Conviction occurring in 2000 from a 1998 arrest. A
24 2002 conviction for manufacture or delivery of a
25 controlled substance, that being heroin, from Cook

1 County, Illinois.

2 And apparently a misdemeanor arrest from
3 2003 that -- a conviction for attempted possession of
4 heroin, less than 15 grams, also in Cook County. And
5 then the most recent felony conviction from 2004 on
6 possession of cocaine, less than 15 grams, where the
7 defendant received 18 months prison and had a parole
8 revocation in 2005.

9 And as noted by the probation officer in the
10 Pretrial Services Report, a number of those
11 arrests -- the defendant's arrests and convictions
12 occurred while other cases remained pending and when
13 he was under Court supervision.

14 Based on the information in the Pretrial
15 Services Report and the testimony of Agent Furman,
16 the United States believes that there is no condition
17 or combination of conditions that would reasonably
18 assure Mr. Mitchell's appearance and the safety of
19 the community. And we would ask that he be detained.

20 THE COURT: Mr. Clements.

21 MR. CLEMENTS: Thank you, Your Honor.

22 Although my client does have a criminal
23 history, we would point out that for the past six
24 years he's had no significant involvement with the
25 criminal justice system. And also, over that period,

1 a period of eight years, he's lived in the Waterloo
2 community.

3 He has had steady employment, a
4 seven-year-long employment with Tyson. He's worked
5 until last year, in which -- and then he was laid
6 off. He's collecting unemployment now. So he has a
7 history of being employed.

8 He lives in Waterloo with his girlfriend and
9 his 15-year-old son. We believe that he is not a
10 risk of flight nor a danger to the community.

11 THE COURT: The legal standard which the
12 Court applies I've already reviewed. And I won't go
13 through again. I would indicate that the defendant
14 is charged in five counts.

15 In addition to the conspiracy charge in
16 Count 1, he's charged with three counts of
17 distribution near a school and one count of
18 possession with intent to distribute. All of these
19 carry the rebuttable presumption found in Section
20 3142(e), that the defendant should be detained
21 pending the trial in this case.

22 The factors which the Court must consider
23 are the nature and circumstances of the offense
24 charged. Here again, the defendant's charged with
25 five drug-related offenses.

1 The court's required to consider the weight
2 of the evidence. According to Officer Furman, the
3 defendant was intercepted on phone calls in which
4 drug dealing was discussed.

5 Obviously, for purposes of this hearing, I
6 haven't heard those calls. I don't know precisely
7 what they say or how implicating they may be.
8 However, the search of Defendant's residence, as I
9 understand it, revealed ten foils of heroin, along
10 with packaging material.

11 Also, if I understood the testimony
12 correctly, 31 foils of heroin were found in his
13 pocket. There was cutting agent found, Dormin, along
14 with methadone. And I hope I'm not confusing
15 Mr. Mitchell with Mr. Sapp.

16 There were also three controlled buys on
17 January 7, January 10, and January 27. And again,
18 without hearing the precise details of the controlled
19 buys, Officer Furman testified generally as to the
20 procedures that are followed.

21 And generally, a controlled buy is pretty
22 good evidence of distribution of drugs because of the
23 procedures that law enforcement uses. So the weight
24 of the evidence against the defendant would appear to
25 be strong.

1 With respect to the history and
2 characteristics of the defendant, the Court has the
3 Pretrial Services Report regarding Mr. Mitchell. He
4 is 46 years old, was born in Mississippi, and lived
5 there until he was 15, when he moved to Chicago with
6 his family.

7 He then moved to Waterloo about eight years
8 ago, and was living with his girlfriend prior to his
9 arrest. He is single and has never been married,
10 although he does have four children. The defendant
11 is unemployed, although he apparently did have steady
12 employment until sometime in 2010.

13 He's in good health. He has no history of
14 mental or emotional health concerns. The defendant
15 admits to being a daily user of heroin for the past
16 four years, although indicated to the pretrial
17 services officer that he stopped about two months
18 ago.

19 The defendant has a lengthy prior criminal
20 record dating back to age 26. He was actually
21 arrested at age 23 for battery, but disposition of
22 that charge was unknown to the pretrial services
23 officer.

24 At age 26, in 1991, the defendant was
25 charged with possession of a controlled substance and

1 was sent to prison in Illinois for three years.

2 While that charge was pending, the defendant was
3 arrested again for sale or delivery of a controlled
4 substance.

5 And then, in October of 1992, he was
6 sentenced on both of those drug charges to a two-year
7 prison term. He was paroled in May of 1993, after
8 about seven months.

9 While the defendant was on parole, he was
10 charged with solicitation of narcotics. However,
11 that charge was stricken from the docket with leave
12 to reinstate. Also, while he was on patrol, he was
13 charged with possession of heroin.

14 He was -- Or while that new charge was
15 pending, the defendant was arrested again for
16 possession of a controlled substance. In February of
17 1996, he was then given a one-year prison term on the
18 new possession of heroin charge. And the second
19 charge of possession of a controlled substance was
20 not prosecuted.

21 The defendant was paroled in April of 1996,
22 after about two months. About four months later, he
23 was charged with disorderly conduct, which was
24 stricken from the record -- or stricken from the
25 docket with leave to reinstate.

1 Four months later he was charged with
2 possession of a controlled substance, although that
3 was dismissed because there was no probable cause.
4 In 1998, the defendant was charged with possession of
5 cocaine.

6 While that charge was pending, the defendant
7 was charged with possession of heroin. And while
8 both of those charges were pending, the defendant was
9 charged with soliciting an unlawful business. He
10 then received a 60-day home confinement on the first
11 charge, the possession of cocaine.

12 The possession of heroin charge was not
13 prosecuted. And the disposition of the soliciting an
14 unlawful business charge is unknown.

15 In October of 2000, which, by my
16 calculation, would have been just like six days after
17 he finished his 60-days home confinement, the
18 defendant was charged with possession of PCP.
19 However, that charge was not prosecuted.

20 A few months later, he was charged with
21 manufacture and delivery of a controlled substance,
22 specifically heroin. While that charge was pending,
23 the defendant was charged with possession of cocaine.

24 And while both of those charges were
25 pending, the defendant was charged again with

1 possession of cocaine. Then, in November of 2002, he
2 received a 5-year -- five years of probation on the
3 manufacture or delivery of heroin charge. The
4 possession of cocaine charges were not prosecuted.

5 In May of 2003, while he was on probation
6 for manufacture or delivery of heroin, the defendant
7 was charged with manufacture or delivery of cocaine.
8 A few months later, while still on probation for the
9 heroin charge, the defendant was charged with
10 attempted possession of heroin and received a 30-day
11 jail sentence.

12 And then in January of 2004, while on
13 probation on the heroin charge, the defendant was
14 charged with possession of cocaine. He received an
15 18-month prison term. He was paroled after two
16 months.

17 And then later, in May of 2005, his parole
18 was revoked, although it does not indicate the reason
19 for that. And then he was discharged just about six
20 weeks later.

21 I don't know if all of these drug charges
22 were felonies, but at least -- it looks like at least
23 two of them are prior felony drug convictions. And
24 it could be anywhere from three to five of them.

25 There's no indication the defendant's ever

1 failed to appear for a court proceeding. It does not
2 appear that the defendant was on probation or parole
3 at the time of the events which give rise to this
4 charge.

5 And finally, the Court's required to
6 consider the nature and seriousness of the danger to
7 any person or the community that would be posed by
8 the defendant's release.

9 In this case, the Court is particularly
10 struck by the fact that the defendant has repeatedly
11 failed to comply with the terms of either pretrial
12 release or probation or parole. In many cases, he's
13 committed additional crimes while on either pretrial
14 release or probation or parole, some of which were
15 felonies.

16 The Court does not have any confidence that
17 the defendant would comply with any terms and
18 conditions which I may impose. Based on that and the
19 rebuttable presumption that exists, the Court finds
20 that the defendant -- or strike that -- the
21 government has met its burden of proof and the
22 defendant will be detained pending the trial.

23 Now, Mr. Mitchell, you do have the right to
24 appeal my decision. That right to appeal's commenced
25 by filing a motion for review by Chief Judge Linda

1 Reade. And Mr. Clements can assist you in doing
2 that.

3 All right. Let's talk about Mr. Sapp.
4 Mr. Chatham.

5 MR. CHATHAM: Thank you, Your Honor.

6 Again, this is a rebuttable presumption case
7 involving controlled substances. The testimony today
8 has shown that the Defendant Sapp was intercepted
9 again on the Title III.

10 There were three controlled transactions
11 with Mr. Sapp and Mr. Mitchell, and then a search of
12 Mr. Sapp's residence, where the agents recovered ten
13 foils of heroin, packaging material, et cetera. And
14 then, also, Mr. Sapp, I believe, was present with
15 Mr. Mitchell getting off that bus with the seven
16 grams of heroin.

17 Looking to the information in the Pretrial
18 Services Report, Mr. Sapp is currently unemployed,
19 and apparently has been so since October of 2010. He
20 reports to the probation officer that he was a daily
21 user of heroin for the past five to six years and
22 used the day before he was arrested for this offense.

23 Defendant Sapp has a criminal history dating
24 back to 1982, when he received a 45 days jail on a
25 shoplifting charge. And then beginning in '83 -- or

1 in '83, he had a robbery charge, ten years prison
2 received in New Jersey. A felony distribution of
3 heroin and cocaine charge from New Jersey in 1993,
4 where he received three years prison.

5 In 1997, Mr. Sapp was convicted of
6 possession of controlled substance, marijuana, where
7 he had at least two failures to appear. It appears
8 that he had two failures to appear, and then
9 eventually received five days jail that was suspended
10 and a year of probation.

11 In 2000, Defendant Sapp was convicted of
12 domestic abuse assault, without him causing injury,
13 and assault. And then, again, in 2001 -- or in 2001,
14 he was convicted of operating a motor vehicle while
15 intoxicated. And that appears to have occurred while
16 he was on probation in the domestic abuse assault
17 case.

18 In 2002, Mr. Sapp was arrested for another
19 OWI and, in 2003, was convicted of that. 2006, he
20 was arrested for driving while barred as a habitual
21 offender and, in 2007, received 180 days jail. 175
22 of those days were suspended.

23 And then his most recent conviction occurred
24 in 2009 for a possession of a controlled substance,
25 marijuana, as a second offense. And that conviction

1 occurred in June of 2009.

2 Based on the information contained in the
3 Pretrial Services Report and Agent Furman's testimony
4 today, the United States asserts there is no
5 condition or combination of conditions that would
6 reasonably assure the appearance of Mr. Sapp and the
7 safety of the community and would ask that Defendant
8 Sapp be detained.

9 THE COURT: Mr. O'Brien.

10 MR. O'BRIEN: Thank you, Your Honor.

11 I do not think that Mr. Sapp is a flight
12 risk. He has community ties in Waterloo, because
13 that's where he's lived for the last 15 years. This
14 isn't a case where he's been moving around during the
15 last 15 years, but he's had steady residence in
16 Waterloo during that time.

17 He worked for 15 years for Tyson's Foods.
18 So he's had steady employment. Although that ended
19 in October of 2010, he's receiving unemployment and
20 was looking for work. He'd continue to look for and
21 obtain work if released.

22 And his community ties are that of his
23 significant contacts in the area, although not family
24 in the area, a lot of friends and acquaintances, and
25 his whole connection with the community of Waterloo.

1 The nature of the offense charged, while is
2 serious, he's a limited player in this, in that he's
3 a user. He's at the user end of it. His criminal
4 history, while it dates back to 1982, the only
5 violent type of offense that he's had since '82 was
6 the assault without intent to cause injury. The
7 other types are more the misdemeanor.

8 He had the drug in '93, but he's had
9 misdemeanor types in other cases since coming to
10 Iowa: the OWIs, possession of marijuana, and driving
11 while barred. Other than that first early case in
12 Iowa, where he failed to show up for arraignment --
13 which seems to be an anomaly here, because in the
14 future court dates he appears -- he's had no trouble
15 making his court dates and he successfully discharged
16 probation.

17 The one thing that I noted in reviewing the
18 pretrial report is he's had no substance abuse
19 treatment. He's known about this criminal offense
20 hanging over his head since at least the search
21 warrant in February, and he hasn't taken flight.

22 In meeting the bus, there's nothing that's
23 been presented, that I heard today, where my client
24 had anything on his person. He was simply picking up
25 another individual from the bus. And Mr. Sapp, I do

1 think there are conditions upon which he could be
2 released into the community without being a danger to
3 the community and that he would show for court. He
4 did turn himself in on this offense. Thank you.

5 THE COURT: Again, the legal standards which
6 must be applied are set forth in Section 3142(e), the
7 factors which the Court must consider are set forth
8 in Section 3142(g).

9 In this case, Mr. Sapp has been charged in
10 three counts. Obviously, I'm only hearing a small
11 portion of the evidence here today, but it does
12 appear that the evidence against Mr. Sapp -- there
13 hasn't been as much evidence produced against
14 Mr. Sapp as the other defendants.

15 Officer Furman described Mitchell and Sapp
16 as partners, but indicated that Mitchell was the
17 leader. There's testimony that Sapp went to pick
18 Mitchell up at the bus station, but there's no real
19 indication of Sapp's involvement.

20 Sapp's also charged with making a house
21 available. Which, again, that would appear to be
22 part of the testimony about Mitchell and Sapp
23 allegedly selling heroin from Sapp's residence. A
24 search of the residence did reveal ten foils of
25 heroin.

1 The defendant did not make any incriminating
2 statements, as I understand it, so it's difficult for
3 the Court to determine weight of the evidence. But
4 at this point, there's not -- there's no substantial
5 evidence, I guess, or overwhelming evidence that was
6 presented at the hearing today.

7 The Court is also required to consider the
8 history and characteristics of the defendant. Again,
9 those are found in the Pretrial Services Report. The
10 defendant is 47 years old. He was born and raised in
11 Newark, New Jersey. He moved to Waterloo about
12 15 years ago.

13 He, prior to his arrest, was living alone in
14 Waterloo. He has never been married and has no
15 children. He is currently unemployed. He told the
16 pretrial services officer that he was fired from his
17 employment in October of last year because of
18 attendance problems.

19 The defendant's in good health and has no
20 history of mental or emotional concerns. Defendant
21 admits to being a daily user of heroin for the past
22 five or six years and admits that he used it right up
23 until the day prior to his arrest.

24 The defendant has a criminal history dating
25 back to 1982, when he was 19 years old. He had a

1 conviction for shoplifting in 1982 and was also
2 charged in 1982 for marijuana possession and another
3 unspecified drug, although the disposition of those
4 charges are unknown.

5 The next year, in 1983, the defendant was
6 charged and convicted of robbery and carrying a
7 prohibited weapon and was sent -- or given a 10-year
8 prison term, although the date that he was
9 sentenced -- or the date that he was discharged is
10 unknown.

11 In 1989, the defendant was charged with
12 possession of marijuana. That was dismissed. In
13 1990, he was charged again with possession of
14 marijuana. And that was dismissed. In 1993, the
15 defendant was charged with distribution of heroin or
16 cocaine and was sent to prison again for three years.
17 He was discharged in July of 1995.

18 In 1997, the defendant was charged in Black
19 Hawk County, Iowa with possession of a controlled
20 substance, marijuana. He failed to appear twice in
21 that case with a warrant issued and finally served --
22 The defendant received just a five-day suspended jail
23 term.

24 In 2000, the defendant was charged in Black
25 Hawk County and later convicted of domestic abuse

1 assault and a second count of assault. In 2001, he
2 was charged and later convicted of operating while
3 intoxicated, first offense.

4 In 2002, he was charged and later convicted
5 of operating while intoxicated, second offense. In
6 2006, he was charged and later convicted of driving
7 while barred. And in 2009, he was charged with
8 possession of a controlled substance, marijuana,
9 second offense, and received two years probation.

10 Well, he actually received a 90-day jail
11 sentence with 88 days suspended and two years
12 probation. He was discharged early from probation,
13 however, on April 1, 2010.

14 Depending on when it's alleged that Mr. Sapp
15 joined the conspiracy, the defendant may have been on
16 probation during part of the time that gives rise to
17 Count 1.

18 And finally, the Court's required to
19 consider the nature and seriousness of the danger to
20 any person or the community that would be posed by
21 Defendant's release.

22 In this case, the Court is obviously
23 concerned about the defendant's prior criminal record
24 and his failure to appear at court proceedings, but
25 I'm also concerned about the fact that he is addicted

1 to heroin and used heroin right up until the time of
2 his arrest, including after it was apparent that he
3 was the target of a Federal investigation.

4 Obviously, I can't release a defendant if
5 he's going to use controlled substances. And based
6 upon the circumstances here, the Court believes that
7 it's unlikely that the defendant would comply with a
8 condition of release that he not use controlled
9 substances, since he continued to use for a couple of
10 months after it was apparent to him that he was a
11 target in this case.

12 There's rebuttable presumption that applies
13 to -- at least to two of the counts, and maybe all
14 three of the counts against Mr. Sapp. And based upon
15 that rebuttable presumption and the circumstances
16 I've just described, the Court finds that the
17 government has met its burden of proof.

18 Therefore, Mr. Sapp, you will be detained
19 pending the trial. You can appeal my decision by
20 filing a motion for review with Chief Judge Linda
21 Reade. And Mr. O'Brien can assist you in doing that.

22 And Mr. Johnson's next. Mr. Chatham.

23 MR. CHATHAM: Thank you, Your Honor.

24 Again, this is a rebuttable presumption
25 case. It involves controlled substances.

1 Mr. Johnson is somewhat unlike the other defendants,
2 in that he's not someone who is alleged to have been
3 intercepted and was not intercepted on the wiretaps.

4 However, the evidence here today has shown
5 that the defendant was involved -- Defendant Johnson
6 was involved in a controlled transaction January 12th
7 of 2011 of two grams of heroin.

8 Which, based on the testimony today, is not
9 consistent with a user quantity of heroin. It's more
10 of than typical -- a typical user quantity on that
11 day. So it could be inferred from that -- from the
12 quantity, that Mr. Johnson was buying for resale at
13 that point.

14 Mr. Johnson was also the subject of a search
15 warrant at his house in February, on February 15th of
16 2011. At that time there were seven bindles of
17 heroin and a loaded nine-millimeter handgun found.

18 And the defendant, despite the fact that
19 there's no evidence before the Court that it was in
20 his bedroom or that his fingerprints were on the gun,
21 the defendant admitted that it was his gun and that
22 he had that gun for protection and that he bought it
23 on the street. So --

24 And then additionally here, we've got the
25 defendant is apparently employed and has been since

1 June of 2010. But also note that the defendant has
2 reported being a daily user of heroin for the past
3 13 years, with his last use being about two weeks
4 ago.

5 Which, again, is several months after he was
6 made aware of his involvement in a Federal
7 investigation into heroin sales. He continued to use
8 heroin after that time. As to the defendant's
9 criminal history, his first conviction comes in 1990
10 for aggravated criminal sexual assault.

11 And the defendant received ten years in
12 prison. It looks like he spent about four and a half
13 years before being paroled, but was revoked two years
14 later and eventually discharged in 1998.

15 In '97, the defendant was again -- or was
16 convicted for the first time of a felony drug offense
17 in Cook County, Illinois for possession of cocaine,
18 more than 15 grams. He received two years prison
19 and, again, was revoked on parole.

20 In 1999, the defendant received 14 years
21 prison for a possession of a controlled substance,
22 crack cocaine, charge in Cook County. Paroled in
23 2005 and discharged in 2008.

24 And then in 2000 -- or in 1999, the
25 defendant was also convicted of violation of a sex

1 offender registry and received two years prison on
2 that in Cook County, Illinois.

3 When the defendant moved to Iowa, beginning
4 in 2010, he has convictions for operating a motor
5 vehicle while intoxicated, harass of public officer
6 or employee, driving while barred, habitual -- as a
7 habitual offender. That conviction just occurred on
8 March 29th of this year.

9 And then two additional convictions from
10 this year for interference with official acts and
11 disorderly conduct, loud and ruckus noise. And those
12 last two -- The arrests on those last two appear to
13 be about two days after his house was searched and
14 heroin taken out of it.

15 And the United States would note that a
16 number of those convictions occurred while the
17 defendant was on probation or on release or parole.

18 Based on the information contained in the
19 Pretrial Services Report and Officer Furman's
20 testimony today, the United States would assert that
21 there is no condition or combination of conditions
22 that would reasonably assure the appearance of
23 Mr. Johnson or the safety of the community should he
24 be released. And we would ask that Mr. Johnson be
25 detained pending trial.

1 THE COURT: Mr. Wassmer.

2 MR. WASSMER: Yes, Your Honor.

3 First, on the risk of flight, Mr. Johnson
4 has no prior history of failure to appear or escape.

5 The search warrant was executed on February 15th.

6 Mr. Johnson was not arrested at that time. He knew
7 there was an investigation pending, but did not flee.

8 When the arrest warrant after the indictment
9 was issued on April 19th, he surrendered himself as
10 requested by the officers after the officers had
11 contacted his mother.

12 Other ties to the community. He's been
13 steadily employed since moving to Waterloo in 2008.
14 Currently employed as a construction laborer for
15 Modern Builders. And the employer's willing to
16 continue that employment if Mr. Johnson is released.

17 His mother and his girlfriend live in
18 Waterloo. And he can live with his mother, as he's
19 done for the past year or so, if released. On the
20 substance abuse history, my client informs me that
21 what's stated in the Pretrial Services Report is not
22 entirely accurate.

23 He says that he had first used heroin
24 approximately 13 years ago, became a regular user in
25 the last two or three years, with his last use being

1 about three weeks ago.

2 On his criminal history, the sexual assault
3 conviction was over 20 years ago, when he was 17.
4 The two felony drug possessions are both over ten
5 years ago. One other thing I note about the 13 years
6 of substance abuse history is he was in prison during
7 a good chunk of that 13 years for the '99 conviction.
8 Imprisoned from '99 through 2005, it looks like from
9 the report.

10 He does have some more recent criminal
11 history. Mostly the OWI, the driving while barred,
12 and then some misdemeanors. It looks like primarily
13 interference with official acts and those kind of
14 things.

15 With regard to the strength of the evidence,
16 the most serious count here is Count 1, which is the
17 drug conspiracy. And there was little evidence
18 presented that ties Mr. Johnson to that count.

19 There was apparently thousands of hours of
20 phone taps here. And Mr. Johnson does not appear on
21 any of that -- those conversations. His phone was
22 seized or was downloaded -- and the information was
23 downloaded. And there was no evidence that any phone
24 numbers of any of the codefendants is on his cell
25 phone.

1 The only defendant -- the codefendant that
2 he might have a tie to is Mr. Mitchell. And the
3 testimony was pretty vague as to what exactly that
4 tie was. He's also charged in Count 11, which is a
5 controlled buy. The Court didn't hear a whole lot
6 about the circumstances of that.

7 Count 14, the possession with intent to
8 distribute, relates to the seven foils that were
9 seized in the search warrant on February 15th. And
10 then with the firearm, it's alleged that Mr. Johnson
11 admitted to owning that firearm. I think that's
12 going to be a disputed issue going forward here.

13 With regard to danger to the community,
14 there really wasn't a whole lot of evidence that
15 Mr. Johnson was distributing heroin, other than the
16 controlled buy. The only evidence was that
17 Mr. Johnson was an alternate source when one of the
18 other defendants here did not have heroin.

19 But the Court didn't hear any evidence as to
20 how often anyone bought heroin from Mr. Johnson or
21 what quantities were bought. It was asserted that he
22 joined the conspiracy earlier this year, so we only
23 have, at most, a few months of sales, if that.

24 There's no indication that Mr. Johnson's
25 fingerprints were found on the gun or other types of

1 evidence tying him to the gun, other than the alleged
2 statement which was not recorded and which was not
3 apparently even heard by the witness who testified
4 here today.

5 Accordingly, the government has not met its
6 burden on showing a risk of flight or risk to the
7 community. And we would ask that Mr. Johnson be
8 released on conditions.

9 THE COURT: In determining whether
10 Mr. Johnson should be released, the Court considers
11 the factors set forth in Section 3142(g). First, I
12 would note that the defendant is charged in five
13 counts. The first three counts carry rebuttal
14 presumption, Counts 1, 11 and 14.

15 Count 22 I don't believe has rebuttable
16 presumption. And I'm not sure on Count 21, the
17 possession of a gun in relation to a drug trafficking
18 crime. But in any event, the first three counts
19 clearly carry rebuttal presumption.

20 The grand jury has found probable cause to
21 believe the defendant has committed those offenses.
22 So there is a rebuttable presumption that attaches in
23 this case. Nonetheless, the government has the
24 burden of proof. And those factors are set forth in
25 Section 3142(g).

1 The Court's required to consider the nature
2 and circumstances of the offense charged. In this
3 case, the defendant's charged both with drug offenses
4 and with firearm offenses. The Court's required to
5 consider the weight of the evidence.

6 Based on the little snapshot of the
7 testimony that we got today, it does not appear that
8 the defendant was sort of a regular participant in
9 the alleged conspiracy. It is alleged that he was a
10 so-called alternate source and that hook-up was made
11 between one of the alleged co-conspirators and
12 Mr. Johnson to provide heroin.

13 I guess it's probably not all that
14 productive for me to opine as to how strong or weak I
15 think that evidence may be. The evidence with
16 respect to the firearms is somewhat stronger,
17 depending on whether or not you believe the testimony
18 that the defendant admitted that the firearm was his.
19 If he made that admission, then the evidence is
20 strong.

21 The history and characteristics of the
22 defendant are found in the Pretrial Services Report.
23 Defendant is 38 years old. He was born and raised in
24 Chicago. He moved to Waterloo about three years ago.
25 He is single and has never been married, although he

1 has one daughter from a prior relationship, who lives
2 in Chicago.

3 The defendant has been employed as a
4 construction laborer since June of 2010. Prior to
5 that time, he also worked at Tyson Fresh Meats and
6 for a stucco company in Chicago. He's in good
7 health, has no history of mental or emotional health
8 problems.

9 He admits to being a user of heroin.
10 Apparently, with the clarification by Mr. Wassmer,
11 started 13 years ago. Has been using regularly since
12 he came to Waterloo about three years ago, and was a
13 daily user until about two weeks ago.

14 The defendant has a serious prior criminal
15 record dating back to 1990, when he was 17 years old.
16 He was charged with aggravated criminal sexual
17 assault. He was sentenced in 1991 to 10 years in
18 prison. Was paroled after about four and a half
19 years in 1995, in July.

20 In September of 1995 was charged with
21 disorderly conduct. But that was stricken from the
22 docket with leave to reinstate. In April of 1997,
23 while still on parole, the defendant was charged with
24 criminal trespass, but that was stricken from the
25 docket with leave to reinstate.

1 And then, September of 1997, he was charged
2 with possession of cocaine while still on parole.
3 And at that time, in October of 1997, his parole on
4 the sexual assault charge was revoked and he was
5 sentenced to two years in prison on a new cocaine
6 charge. He was then paroled, after about eight
7 months, in June of 1998.

8 In November of 1998, while he was on
9 parole -- this would have been just like five months
10 after he was released from prison -- the defendant
11 was charged with possession of crack cocaine and also
12 with failing to register as a sex offender.

13 In May of 1999, his parole was revoked on
14 the earlier possession of cocaine charge and he
15 received a 14-year prison term on the new possession
16 of cocaine charge and a two-year prison term on the
17 failing to register as a sex offender charge. And he
18 was then in prison from May of 1999 until May of
19 2005. He was discharged from parole in May of 2008.

20 In August of 2009, which would have been
21 after he moved to Iowa, he was charged and later
22 convicted of operating while intoxicated, first
23 offense. In February of 2010, while the OWI charge
24 was still pending, he was charged and later convicted
25 of harassment of a public officer or employee.

1 In September of 2010, while on probation for
2 the OWI charge, the defendant was charged with
3 driving while barred and later convicted. In
4 February of 2011, while on probation, the defendant
5 was charged and later convicted of interference with
6 official acts and disorderly conduct, loud and ruckus
7 noise.

8 And, finally, the Court's required to
9 consider the nature and seriousness of the danger to
10 any person or the community that would be posed by
11 the defendant's release. In this case, the Court is
12 particularly impressed by two things:

13 One is that the defendant has repeatedly
14 committed new criminal offenses while on probation,
15 parole, and pretrial release, including felony
16 offenses. Accordingly, I'm not confident that he
17 would comply with the terms and conditions of his
18 release.

19 Second, the defendant admits using heroin on
20 a regular basis, even after it became apparent that
21 he was a target of a Federal investigation. Again,
22 there's no reason for the Court to believe that the
23 defendant would be compliant with a condition that he
24 not use controlled substances.

25 Given those facts and circumstances and

1 given the rebuttable presumption that's found in
2 Section 3142(e), the Court concludes that the
3 government has met its burden of proof in this
4 regard, and Mr. Johnson will be detained pending
5 trial.

6 Mr. Johnson, you do have a right to appeal
7 my decision. That right to appeal's commenced by
8 filing a motion for review by Chief Judge Linda
9 Reade. And Mr. Wassmer can assist you in doing that.
10 Written orders will be entered either later today or
11 tomorrow.

12 Is there anything else that needs to be
13 addressed, Mr. Chatham?

14 MR. CHATHAM: No, Your Honor.

15 THE COURT: Ms. Kelly?

16 MS. KELLY: No.

17 THE COURT: Mr. Clements?

18 MR. CLEMENTS: No.

19 THE COURT: Mr. O'Brien?

20 MR. O'BRIEN: No, Your Honor.

21 THE COURT: Mr. Wassmer?

22 MR. WASSMER: No, Your Honor.

23 THE COURT: That will conclude the hearing.

24 THE CLERK: All rise.

25 (The proceedings concluded at 10:42 a.m.)

1

CERTIFICATE

2

I, the undersigned, a Certified Shorthand Reporter and Notary Public of the State of Iowa, do hereby certify that I acted as the Certified Shorthand Reporter in the foregoing matter at the time and place indicated herein; that I took in shorthand the proceedings had at said time and place; that said shorthand notes were reduced to print under my supervision and direction by means of computer-aided transcription; and that the foregoing pages are a full and correct transcript of the shorthand notes so taken.

13

14

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of May, 2011.

16

17

18

19

/s/ Sarah Dittmer

20

Sarah J. Dittmer

21

Certified Shorthand Reporter

22

23

24

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\$	5	additionally [1] - 67:24 address [1] - 33:23 addressed [1] - 78:13 admission [2] - 11:8, 74:19 admissions [3] - 11:9, 17:8, 22:9 admits [7] - 43:15, 47:16, 53:15, 63:21, 63:22, 75:9, 77:19 admitted [6] - 34:19, 34:22, 42:9, 67:21, 72:11, 74:18 age [4] - 44:2, 53:20, 53:21, 53:24 Agent [2] - 31:10, 31:15 agent [11] - 6:14, 14:7, 17:22, 18:1, 30:17, 34:5, 38:23, 39:14, 50:15, 52:13, 60:3 agent's [1] - 37:6 agents [9] - 7:8, 7:19, 7:20, 14:3, 17:11, 19:17, 23:13, 24:21, 58:12 ages [1] - 36:10 aggravated [2] - 68:10, 75:16 aggressive [1] - 39:5 ago [15] - 43:19, 47:7, 47:25, 53:8, 53:18, 63:12, 68:4, 70:24, 71:1, 71:3, 71:5, 74:24, 75:11, 75:12, 75:13 aided [2] - 40:19, 79:10 alcohol [1] - 43:13 allegations [1] - 42:4 alleged [9] - 38:24, 39:2, 65:14, 67:2, 72:10, 73:1, 74:9, 74:11 allegedly [1] - 62:23 alleges [1] - 19:21 alleging [1] - 22:4 alone [1] - 63:13 alternate [4] - 16:5, 26:24, 72:17, 74:10 America [2] - 1:3, 4:7 amount [4] - 14:8, 23:19, 29:19, 29:22 anomaly [1] - 61:13 apologize [1] - 17:24 apparent [4] - 49:15, 66:2, 66:10, 77:20 appeal [5] - 48:7, 57:24, 66:19, 78:6
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